

AMENDED IN SENATE APRIL 22, 2013

**SENATE BILL**

**No. 189**

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**Introduced by Senator Monning**  
**(Coauthor: Senator De León)**  
*(Coauthor: Assembly Member Ammiano)*

February 7, 2013

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An act to add and repeal Section 1367.007 of the Health and Safety Code, and to add and repeal Section 10112.7 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 189, as amended, Monning. Health care coverage: wellness programs.

Existing ~~federal~~ law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that take effect January 1, 2014. Among other things, PPACA allows the premium rate charged by a health insurance issuer offering small group or individual coverage to vary only by family composition, rating area, age, and tobacco use, as specified, and prohibits discrimination against individuals based on health status, as specified. PPACA prohibits a health insurance issuer from requiring any individual to pay a premium or contribution that is greater than the premium or contribution paid by a similarly situated individual on the basis of any health status-related factor and prohibits construing this provision to prevent a group health insurance issuer from establishing premium discounts or rebates or modifying copayments or deductibles in return for adherence to wellness programs, as specified.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans

by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law allows small employer health care service plan contracts and health insurance policies for plan years on or after January 1, 2014, to vary rates only based on age, geographic region, and family size, as specified.

This bill, until January 1, 2020, would prohibit a health care service plan or health insurer from offering a wellness program in connection with a group health care service plan contract or group health insurance policy, or offering an incentive or reward under a group health care service plan contract or group health insurance policy, based on adherence to a wellness program, unless specified requirements are satisfied. The bill would specify that it does not apply to wellness programs established prior to its enactment provided that those programs comply with all other applicable laws, as specified.

Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1367.007 is added to the Health and  
2     Safety Code, to read:  
3     1367.007. (a) A health care service plan shall not offer a  
4     wellness program in connection with a group health care service  
5     plan contract, or offer an incentive or reward under a group health  
6     care service plan contract based on adherence to a wellness  
7     program, unless all of the following requirements are satisfied:  
8     (1) The program is reasonably designed to promote health or  
9     prevent disease. A program complies with the preceding sentence  
10    if the program has a reasonable chance of improving the health  
11    of, or preventing disease in, participating individuals, is not overly  
12    burdensome, is not a subterfuge for ~~discriminating~~ *discrimination*

1 based on a health status factor, does not lead to cost shifting, and  
2 is not highly suspect in the method chosen to promote health or  
3 prevent disease.

4 (2)

5 (2) The incentive or reward is not in the form of a discount on,  
6 or rebate of, a premium, deductible, copayment, or coinsurance.  
7 Incentives may include rewards for participation that are not linked  
8 to premiums, deductibles, copayments, or coinsurance.

9 (3) Participation in the program is voluntary.

10 (4) Receipt of an incentive or reward for participation in the  
11 program is not conditioned on an individual satisfying a standard  
12 that is related to a health status factor. The following wellness  
13 programs shall be deemed to satisfy this paragraph:

14 (A) A program that reimburses all or part of the cost for  
15 ~~memberships~~ *membership* in a fitness center.

16 (B) A diagnostic testing program that provides a reward for  
17 participation and does not base any part of the reward on outcomes.

18 (C) A program that provides a reward to individuals for  
19 attending a periodic health education seminar, so long as  
20 participation is not related to a particular health condition or any  
21 other health status factor.

22 (5) Participation in the program is offered to all similarly situated  
23 individuals.

24 (6) Reasonable accommodation is provided for individuals with  
25 disabilities who seek to voluntarily participate in the program.

26 (7) A reasonably available and equivalent alternative is provided  
27 to those individuals who seek to voluntarily participate in the  
28 program but are unable to participate due to occupational  
29 requirements, a medical condition, or other hardship.

30 (8) All materials related to the program disclose the availability  
31 of the accommodations under paragraphs (6) and (7).

32 (9) The program assesses the cultural competency needs of the  
33 health care service plan's population in its design.

34 (10) The program provides language assistance for limited  
35 English-speaking individuals.

36 (11) The program does not result in any decrease in benefits  
37 coverage.

38 (12) The program does not result in an increase in premium for  
39 the product as demonstrated through rate review consistent with  
40 Article 6.2 (commencing with Section 1385.01).

1 (13) The incentive or reward does not exceed the amounts  
2 determined to be unreasonable by regulation by the director in  
3 consultation with the Insurance Commissioner

4 (14) The incentive or reward does not exceed the percentage of  
5 the cost of coverage under the plan contract identified in Section  
6 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.  
7 Sec. ~~300gg-4~~ 300gg-4(j)(3)(A)) or regulations adopted thereunder.

8 (b) Nothing in this section shall prohibit a wellness program  
9 that was established prior to January 1, 2014, and applied consistent  
10 with all applicable laws in effect immediately prior to that date,  
11 and that is operating immediately prior to that date, from continuing  
12 to be carried out for as long as those laws remain in effect.

13 (c) By March 1, 2019, the department shall submit a report to  
14 the appropriate policy committees of the Legislature on the  
15 operation of health care service plan-based wellness programs.

16 (d) For purposes of this section, “wellness program” means a  
17 program that is designed to promote health or prevent disease.

18 (e) This section shall remain in effect only until January 1, 2020,  
19 and as of that date is repealed, unless a later enacted statute, that  
20 is enacted before January 1, 2020, deletes or extends that date.

21 SEC. 2. Section 10112.7 is added to the Insurance Code, to  
22 read:

23 10112.7. (a) A health insurer shall not offer a wellness program  
24 in connection with a group health insurance policy or offer an  
25 incentive or reward under a group health insurance policy based  
26 on adherence to a wellness program unless all of the following  
27 requirements are satisfied:

28 (1) The program is reasonably designed to promote health or  
29 prevent disease. A program complies with the preceding sentence  
30 if the program has a reasonable chance of improving the health  
31 of, or preventing disease in, participating individuals, is not overly  
32 burdensome, is not a subterfuge for ~~discriminating~~ *discrimination*  
33 based on a health status factor, does not lead to cost shifting, and  
34 is not highly suspect in the method chosen to promote health or  
35 prevent disease.

36 (2) The incentive or reward is not in the form of a discount on,  
37 or rebate of, a premium, deductible, copayment, or coinsurance.  
38 Incentives may include rewards for participation that are not linked  
39 to premiums, deductibles, copayments, or coinsurance.

40 (3) Participation in the program is voluntary.

1 (4) Receipt of an incentive or reward for participation in the  
2 program is not conditioned on an individual satisfying a standard  
3 that is related to a health status factor. The following wellness  
4 programs shall be deemed to satisfy this paragraph:

5 (A) A program that reimburses all or part of the cost for  
6 ~~memberships~~ *membership* in a fitness center.

7 (B) A diagnostic testing program that provides a reward for  
8 participation and does not base any part of the reward on outcomes.

9 (C) A program that provides a reward to individuals for  
10 attending a periodic health education seminar, so long as  
11 participation is not related to a particular health condition or any  
12 other health status factor.

13 (5) Participation in the program is offered to all similarly situated  
14 individuals.

15 (6) Reasonable accommodation is provided for individuals with  
16 disabilities who seek to voluntarily participate in the program.

17 (7) A reasonably available and equivalent alternative is provided  
18 to those individuals who seek to voluntarily participate in the  
19 program but are unable to participate due to occupational  
20 requirements, a medical condition, or other hardship.

21 (8) All materials related to the program disclose the availability  
22 of the accommodations under paragraphs (6) and (7).

23 (9) The program assesses the cultural competency needs of the  
24 health care service plan's population in its design.

25 (10) The program provides language assistance for limited  
26 English-speaking individuals.

27 (11) The program does not result in any decrease in benefits  
28 coverage.

29 (12) The program does not result in an increase in premium for  
30 the product as demonstrated through rate review consistent with  
31 Article 4.5 (commencing with Section 10181).

32 (13) The incentive or reward does not exceed the amounts  
33 determined to be unreasonable by regulation by the commissioner  
34 in consultation with the Director of the Department of Managed  
35 Health Care.

36 (14) The incentive or reward does not exceed the percentage of  
37 the cost of coverage under the policy identified in Section  
38 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.  
39 Sec. 300gg-4(j)(3)(A)) or regulations adopted thereunder.

1 (b) Nothing in this section shall prohibit a wellness program  
2 that was established prior to January 1, 2014, and applied consistent  
3 with all applicable laws in effect immediately prior to that date,  
4 and that is operating immediately prior to that date, from continuing  
5 to be carried out for as long as those laws remain in effect.

6 (c) By March 1, 2019, the department shall submit a report to  
7 the appropriate policy committees of the Legislature on the  
8 operation of health insurer-based wellness programs.

9 (d) For purposes of this section, “wellness program” means a  
10 program that is designed to promote health or prevent disease.

11 (e) This section shall remain in effect only until January 1, 2020,  
12 and as of that date is repealed, unless a later enacted statute, that  
13 is enacted before January 1, 2020, deletes or extends that date.

14 SEC. 3. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.